

47 Section 1. Paragraph 8 of subdivision (b) of section 1101 of the tax
48 law is amended by adding a new subparagraph (vi) to read as follows:

49 (vi) For purposes of subclause (I) of clause (C) of subparagraph (i)
50 of this paragraph, a person making sales of tangible personal property
51 or services taxable under this article ("seller") shall be presumed to
52 be soliciting business through an independent contractor or other repre-
S. 6807--C 185 A. 9807--C

1 sentative if the seller enters into an agreement with a resident of this
2 state under which the resident, for a commission or other consideration,
3 directly or indirectly refers potential customers, whether by a link on
4 an internet website or otherwise, to the seller, if the cumulative gross
5 receipts from sales by the seller to customers in the state who are
6 referred to the seller by all residents with this type of an agreement
7 with the seller is in excess of ten thousand dollars during the preced-
8 ing four quarterly periods ending on the last day of February, May,
9 August, and November. This presumption may be rebutted by proof that
10 the resident with whom the seller has an agreement did not engage in any
11 solicitation in the state on behalf of the seller that would satisfy the
12 nexus requirement of the United States constitution during the four
13 quarterly periods in question. Nothing in this subparagraph shall be
14 construed to narrow the scope of the terms independent contractor or
15 other representative for purposes of subclause (I) of clause (C) of
16 subparagraph (i) of this paragraph.

17 § 2. For sales tax quarterly periods commencing before June 1, 2008,
18 the commissioner of taxation and finance may not determine tax, or
19 related interest or penalty, pursuant to section 1138 of the tax law,
20 required to be collected but for this section by a person meeting the
21 following conditions, against that person: (a) on the effective date of
22 this act, the person (1) is presumed to be a vendor by reason of section
23 one of this act; (2) is a vendor solely by reason of activities
24 described in subclause (I) of clause (C) of subparagraph (i) of para-
25 graph (8) of subdivision (b) of section 1101 of the tax law but without
26 regard to whether the person is a vendor under clause (A) of subpara-
27 graph (i) of paragraph (8) of subdivision (b) of such section; (3) is
28 not registered as a vendor pursuant to section 1134 of the tax law, was
29 not registered at any time in the nine months prior to that effective
30 date, and was not registered as a vendor at the time of making the sale
31 for which the person failed to collect sales tax; and (b) the person
32 registers as a vendor pursuant to section 1134 of the tax law and
33 commences to collect sales tax by June 1, 2008. Nothing in this section
34 precludes the commissioner of taxation and finance from determining,
35 pursuant to section 1138 of the tax law, sales and use tax, interest,
36 and penalties against a person not meeting the conditions set forth in
37 the preceding sentence.

38 § 3. This act shall take effect immediately and shall apply to sales
39 made, uses occurring, and services rendered on or after the date this
40 act shall have become a law in accordance with applicable transition
41 provisions in sections 1106 and 1217 of the tax law and without regard
42 as to the date the seller and the resident entered into the agreement
43 described in section one of this act. Provided, however, that the term
44 "the preceding four quarterly periods ending on the last day of Febru-
45 ary, May, August, and November" as used in section one of this act may
46 include quarterly periods commencing prior to the effective date of this
47 act.